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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Pearl Cohen Zedek Latzer, LLP
1500 Broadway
12th Floor
New York, NY 10036

EXAMINER

ROCCA, JOSEPH M

ART UNIT	PAPER NUMBER
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3616

NOTIFICATION DATE	DELIVERY MODE
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12/02/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@pczlaw.com
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Office Action Summary	Application No. 10/577,837	Applicant(s) ZIMBALISTA ET AL.	
	Examiner JOSEPH ROCCA	Art Unit 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,9,17,29,32,33,36 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,9,17,29,32,33,36 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2006 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/16/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hopper (US Pub. App. 2003/0159861) in view of Andes (US 6,443,252 B1).

Hopper discloses a maneuverable device for transporting a load over a surface (i.e. a wheeled carriage for transporting a substantially horizontal patient (a motorized hospital bed)), comprising:

a platform **120** for supporting a load to be transported;

a base **118** comprising a plurality of castors **130-133**;

at least one auxiliary wheel **136 or 138** mounted for rotation about at least one fixed axis with respect to said base;

a power unit **192** configured for providing motive power to said at least one auxiliary wheel **136 or 138**;

a driving unit **140** for steering said device, wherein the driving unit operates independently of said at least one auxiliary wheel (this is met because the driving unit causes the castors 130-133 to rotate and has no effect on turning the at least one auxiliary wheels 136 or 138).

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Hopper does not teach the newly added limitation of a wheeled support connected to the platform for supporting a user during operation of the platform.

Andes teaches a wheel chair with a power unit powering said wheelchair and a driving unit for steering said wheel chair (i.e. an electric wheelchair). Andes' wheel chair further comprises a wheeled support **40** connected to the wheelchair for supporting a user during operation of the platform. Andes teaches that its wheeled support provides the improvement of allowing a caregiver or friend to be simultaneously transported along with the person sitting in the wheelchair (Andes, 1:63 to 2:1).

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Hopper, such that Hopper further included a wheeled support connected to the platform for supporting a user during operation of the platform, in view of Andes, so as to achieve the desirable result of allowing a caregiver or friend to be simultaneously transported along with the person in the hospital bed. Further, Applicant should note that connecting a support of the type taught by Andes with the device taught by Hopper would be obvious as no more than the predictable improvement of a similar device (i.e. the motorized hospital bed) in the same way as a known device was known to be improved (i.e. the motorized wheelchair).¹ Specifically, utilizing a wheel support of the type taught by Andes, on Hopper's bed would yield predictable results, since one of ordinary skill in the art at the time of invention would

¹ "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. Sakraida and Anderson's-Black Rock are illustrative – a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007).

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have readily understood that using such a wheeled support of the type taught by Andes would achieve the same advantages on a bed as it did on a wheelchair (i.e. allowing a caregiver or friend to be simultaneously transported along with the person in the bed).

NOTE: Applicant should further note that Applicant's use of the term "connected" as used in the claim encompasses an indirect connection under the broadest reasonable interpretation standard of claim construction. Additionally, the wheeled support taught by Applicant encompasses an indirect connection as shown by the relative locations of Applicant's platform 20 and wheeled support 140, in Fig. 7. Thus it is permissible for the prior art to encompass an indirect connection, since this indirect connection meets the limitations of the claim in at least as much as Applicant's own invention does.

Regarding claim 2, the combination of Hopper in view of Andes teaches a deployment/retraction mechanism for selectively deploying and retracting said at least one auxiliary wheel **136, 138** with respect to said surface, wherein when deployed said at least one auxiliary wheel is in traction contact with said surface, and wherein when retracted said at least one auxiliary wheel is distanced away from said surface (See, Hopper Figs. 2-10; ¶¶ 0077-84).

Regarding claim 5, the combination of Hopper in view of Andes teaches that said platform is mounted to said base by means of a pair of longitudinally spaced support columns (See, Hopper **122, 124**).

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Regarding claim 29, the combination of Hopper in view of Andes teaches that said device is in the form of a bed for transporting a patient along a ground surface (i.e. Hopper's device is a bed).

3. Claims 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Hopper in view of Andes, as applied to claims 1, 2, 5, and 29, further in view of Heimbrock (US 5,987,671). The combination of Hopper in view of Andes teaches all limitations of claim 9 except for said driving unit being retractably mounted to said platform. Specifically, as discussed above, Hopper's handles 140 are interpreted as the driving unit; but, these handles 140 are not taught as being retractably mounted to said platform. Heimbrock, however, teaches another hospital bed with similar handles **66, 68** and teaches that these handles retract into the bed surface (are drawn back towards the bed), so as to maximize a caregiver's access to the patient (Fig. 4; 9:40-46). It would have been obvious to one of ordinary skill in the art at the time of invention to have further modified the combination of Hopper in view of Andes, such that said driving unit is retractably mounted to said platform, in view of Heimbrock, so as to achieve the desirable result of maximizing a caregiver's access to the patient.

Regarding claim 17, the combination of Hopper in view of Andes, further in view of Heimbrock further teaches that said castors are configured to selectively operate in any one of at least two modes, including a neutral mode and a brake mode (specifically, said brakes are taught by Heimbrock – "Contact of the brake shoes with wheel 132 of each caster 44 stops rotation and swiveling movement of wheels 132 and casters 44" at 12:42-45).

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4. Claims 32, 33, 36, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Hopper in view of Andes, as applied to claims 1, 2, 5, and 29, further in view of Strong (US Pub. App. 2002/0175018). The combination of Hopper in view of Andes teaches all limitations of claim 32 except for a steering mechanism for collectively steering said plurality of castors in responsive to a controlling input from said driving unit. Strong discloses a steering mechanism for collectively steering a plurality of castors in responsive to a controlling input from said driving unit (Abstract, ¶¶ 0008-0020, 0055). Strong teaches that its steering mechanism is capable of being used on any type of wheeled driven vehicle or trailed device (¶ 0055). Strong teaches that using a steering mechanism of the type claimed is useful in “provid[ing] direct steering control at higher speeds or uneven traction condition for vehicle stability and yet maintains the advantages of free rotating dolly wheel maneuverability at low speeds” (¶ 0009). It would have been obvious to one of ordinary skill in the art at the time of invention to have further modified the combination of Hopper in view of Andes, to utilize a steering mechanism for collectively steering said plurality of castors in responsive to a controlling input from said driving unit, in view of Strong, so as to achieve the desirable result providing direct steering control of the device at higher speeds and/or uneven traction condition for vehicle stability and also the ability to maintain the advantages of free rotating dolly wheel maneuverability at low speeds.

Regarding claim 33, the combination of Hopper in view of Andes, further in view of Strong further teaches that said castors are configured to selectively operate in any

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one three modes, including a neutral mode, a steering mode and a brake mode (specifically Strong teaches these limitations as applied to the combination).

Regarding claim 36, the combination of Hopper in view of Andes, further in view of Strong, further teaches a steering system for collectively steering said plurality of castors in the steering mode responsive to a controlling input from said driving unit (this is taught because Hopper teaches a driving unit and this when viewed in combination with Strong's driving unit, controller and steering system renders the limitation obvious based on the combined teachings of the references).

Regarding claim 40, the combination of Hopper in view of Andes, further in view of Strong, further teaches that said device is in the form of a bed for transporting a patient along a ground surface (note: this is because Hopper as part of the combination teaches a bed).

Response to Arguments

5. Applicant's arguments with respect to claims 1, 2, 5, 9, 17, 29, 32, 33, 36, and 40 have been considered but are moot in view of the new ground(s) of rejection.

Specifically, Applicant's arguments as to the patentability of the pending claims, are based upon the contention that the previously applied art did not teach or suggest the newly added claim limitation of "a wheeled support connected to the platform for supporting a user during operation of the platform." This limitation was added to both independent claims (i.e. claims 1 and 32). Since, this newly added limitation is obvious based on the newly applied reference to Andes (US 6,443,252 B1), for the reasons discussed above in the rejections, the claims remain unpatentable. As an additional

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note Applicant should observe the features of WO 03/034968 A1, which was cited by Applicant previously, and Hagan (US Pub. App. 2004/0251658 A1), and Smith (U.S. Pub. App. 2003/0057751 A1), which are cited in the present PTO-892 form. The features of these references should be observed when making future amendments because these references teach wheeled supports for motorized medical devices and have similar features to Applicant's disclosed wheeled support. Additionally, Applicant should observe Trickett (US 5,236,213), which teaches that those of ordinary skill in the art at the time of the invention realized that objects can be towed behind both wheelchairs and hospital beds (*compare* Trickett, Fig. 1 *with* Trickett, Fig. 6) with equal success.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH ROCCA whose telephone number is (571)272-5191. The examiner can normally be reached on 8:00 AM to 6:30 PM, Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-7742. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph Rocca/
Examiner, Art Unit 3616

/Toan C To/
Primary Examiner, Art Unit 3616

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November 29, 2010